NOTES

Holt Civic Club v. City of Tuscaloosa: Extraterritorials Denied the Right to Vote

Statutes in thirty-five states authorize municipalities to exercise governmental powers in unincorporated areas beyond the municipalities' territorial boundaries. Typically, those affected by the exercise of such power are not permitted to vote in municipal elections. In Holt Civic Club v. City of Tuscaloosa, the United States Supreme Court rejected an equal protection challenge to an Alabama statutory scheme that sanctioned the exercise of extraterritorial power without representation. The Court argued that extraterritorials had no right to vote in city elections because they were not residents of the city. Accordingly, the Court applied a rational basis standard to the statutory scheme and found that the scheme furthered a legitimate state interest.

This Note suggests that the Supreme Court erred in Holt by failing to apply a strict scrutiny standard to Alabama's statutory provisions. The first part of the Note reviews the facts and the Court's analysis. Part II describes the background of voting rights cases. In Part III, the Note contends that the test established in Holt to identify when the right to vote has been infringed is both unprecedented and unwarranted, and that the Court should have applied a strict scrutiny standard to Alabama's statutes. The Note also argues that under the strict scrutiny standard, the Court should have invalidated the statutory scheme and enlisted the assistance of the state legislature to develop an acceptable alternative.

I
The Case

The Alabama Code authorizes cities to exercise "police jurisdic-

3. Id. at 75.
4. ALA. CODE § 11-40-10 (1975). Cities and towns with a population less than 6,000, however, may exercise extraterritorial powers only within one and one-half miles of their corporate limits. Id.
tion” over adjacent territory lying within three miles of the corporate limits of the city. “Police jurisdiction” permits the city to promulgate and enforce police and sanitary regulations, grants the municipal court jurisdiction over the adjacent territory, and allows regulation of business, trades, and professions. Pursuant to this statutory grant the City of Tuscaloosa subjected its unincorporated neighbor, Holt, to a panoply of regulations and services, including criminal ordinances.

5. **ALA. CODE** § 11-40-10 provides in relevant part: “Ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof shall have force and effect in the limits of the city or town and in the police jurisdiction thereof . . . .” (emphasis added).

6. **ALA. CODE** § 12-14-1(b) (1975). In 1973, when this suit was instituted, Alabama employed a system of “recorder’s courts” to dispense justice on the local level. This system was abolished in 1975 and replaced by municipal courts “having similar extraterritorial jurisdiction.” 439 U.S. at 62 n.4.

7. **ALA. CODE** § 11-51-91 (1975). This is accomplished by issuing permits at one-half the rate charged municipal residents. *Id.*

8. The following is a list of the Tuscaloosa Ordinances having effect in the police jurisdiction:

- **Licenses:**
  - 4-1 ambulance
  - 9-4, 9-18, 9-33 bottle dealers
  - 19-1 junk dealers
  - 20-5 general business license ordinance
  - 20-67 florists
  - 20-102 hotels, motels, etc.
  - 20-163 industry

- **Buildings:**
  - 10-1 inspection service enforces codes
  - 10-10 regulation of dams
  - 10-21 Southern Standard Building Code adopted
  - 10-25 building permits
  - 13-3 National Electrical Code adopted
  - 14-23 Fire Prevention Code adopted
  - 14-65 regulation of incinerators
  - 14-81 discharge of cinders
  - Chapter 21A mobile home parks
  - 25-1 Southern Standard Plumbing Code adopted
  - 33-79 disposal of human wastes
  - 33-114, 118 regulation of wells

- **Public Health:**
  - 5-4 certain birds protected
  - 5-4C, 42, 55 dogs running at large and bitches in heat prohibited
  - 14-4 no smoking on buses
  - 14-15 no self-service gas stations
  - 15-2 regulation of sale of produce from trucks
  - 15-4 food establishments to use public water supply
  - 15-16 food, meat, milk inspectors
  - 15-37-40 regulates boardinghouses
Alabama Code, however, did not require Tuscaloosa to afford Holt residents a right to vote in Tuscaloosa elections, nor did the City of Tuscaloosa voluntarily do so.

Objecting to this scheme, the Holt Civic Club and seven individual residents of Holt brought a statewide class action suit in federal district court, seeking either (1) a determination that the State's authorizing statutes were invalid, or (2) a grant of the right to vote in municipal

TUSCALOOSA, ALA., CODE (1975), quoted in 439 U.S. at 82 n.4 (Brennan, J., dissenting).
elections to extraterritorial nonresidents such as themselves.\textsuperscript{9} They contended that Tuscaloosa’s exercise of police powers without extending the franchise “infringe[d] on their constitutional right (under the due process and equal protection clauses) to a voice in their government.”\textsuperscript{10} Accordingly, they urged the court to find Alabama’s statutory scheme invalid unless it served a compelling state interest.

The three-judge district court denied relief.\textsuperscript{11} In an opinion by Justice Rehnquist,\textsuperscript{12} the United States Supreme Court affirmed. The Court refused to characterize this action as a voting rights case. Focusing on the geographic distinction between residents and nonresidents, the Court held that “a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders.”\textsuperscript{13} The appellants therefore had no right to vote in Tuscaloosa’s elections because they did not reside there. The Court then applied a rational basis standard to Alabama’s statutory framework—based on the conclusion that the scheme did not infringe appellants’ fundamental right to vote—and found that it advanced legitimate governmental purposes.\textsuperscript{14}

Uncomfortable with this analysis, Justice Stevens qualified his endorsement of the majority’s result in his concurring opinion.\textsuperscript{15} He perceived that the majority’s geographical test appears on its face to approve all extraterritorial exercises of municipal power without representation. He questioned the soundness of this test and concurred only with the specific understanding that \textit{Holt} “does not make all exercises of extraterritorial authority . . . immune from attack under the Equal Protection Clause of the Constitution.”\textsuperscript{16} Justice Stevens explained that \textit{Holt} was a class action involving all Alabama cities and their police jurisdictions, and that appellants did not demonstrate that the challenged statutory scheme is “unconstitutional by its terms.”\textsuperscript{17} He went on to argue: “[B]ut it may well be . . . that that scheme . . . might sometimes operate to deny the franchise to individuals who share the interests of their voting neighbors.”\textsuperscript{18} Thus, Justice Stevens attempted

\textsuperscript{9} 439 U.S. at 62-63, 65.
\textsuperscript{10} 439 U.S. at 62-63, 65.
\textsuperscript{11} Complaint of Appellant at ¶ 11, quoted in 439 U.S. at 80.
\textsuperscript{12} Chief Justice Burger and Justices Stewart, Blackmun, Powell, and Stevens joined in the Rehnquist opinion. 439 U.S. at 61.
\textsuperscript{13} Id. at 68-69.
\textsuperscript{14} Id. at 70-75.
\textsuperscript{15} Id. at 75 (Stevens, J., concurring.).
\textsuperscript{16} Id. at 76.
\textsuperscript{17} Id. at 78.
\textsuperscript{18} Id.
to keep open the door that the majority’s geographic test apparently slammed shut.

In his dissenting opinion, Justice Brennan took the Rehnquist majority to task for its refusal to characterize Holt as a voting rights case. He maintained that strict scrutiny was the appropriate level of review, and that the Alabama statutes were constitutionally infirm. Justice Brennan would have granted appellants full participation in Tuscaloosa’s elections.

II
LEGAL BACKGROUND

This section first examines Reynolds v. Sims, which established the “one man, one vote” principle in voting rights cases. It then traces the development of Reynolds in two distinct areas applicable to Holt—“special purpose” elections and residency requirements. Finally, this section considers Little Thunder v. South Dakota, the only decision prior to Holt that directly addressed the constitutional validity of the exercise of extraterritorial power over disenfranchised nonresidents.

A. Reynolds, Voting Restrictions, and Strict Scrutiny

Prior to Holt the Supreme Court had uniformly held that courts should strike down classifications that prevented individuals from voting who had a substantial interest in or were substantially affected by a general-interest election unless the state could demonstrate that its laws were necessary to promote a compelling state interest. This doctrine emanated from the landmark case of Reynolds v. Sims.

Reynolds, a taxpayer and resident of Jefferson County, Alabama, brought suit in federal district court in 1961, alleging that Alabama’s reapportionment plan violated the equal protection clause. The reapportionment plan was based on a census taken in 1900. Reynolds argued that the burgeoning growth of metropolitan areas since the turn of the century had created a wide disparity between the weight of rural and urban voters under the plan. As a consequence, voters in urban counties were grossly underrepresented in the state legislature. This

19. Justices White and Marshall joined in this dissent. Id. at 79.
20. Id. at 87-88.
21. Id at 88.
23. 518 F.2d 1253 (8th Cir. 1975).
disparity, he contended, violated equal protection.

In a lengthy opinion by Chief Justice Warren, the Court agreed. Although embracing a variety of values, the opinion rested largely on the majoritarian principle that one person’s vote should count equally with that of every other. The opinion also emphasized the belief, enunciated by the Court nearly a century ago, that voting is “a fundamental political right, because preservative of all rights.” To implement this philosophy, the Court mandated equal apportionment of both houses of state legislatures and stated that, to be upheld, any restriction of the right to vote must serve a compelling state interest.

26. See, e.g., the extracts from the Reynolds opinion in H. Ball, supra note 25, at 169-72.
27. “No one would deny that the equal protection clause would . . . prohibit a law that would expressly give certain citizens a half-vote and others a full vote.” Reynolds v. Sims, 377 U.S. at 563 n.40 (citing Colegrove v. Green, 328 U.S. 549, 569 (1946) (Douglas, J., dissenting)). The Chief Justice then noted that “the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical.” Reynolds v. Sims, 377 U.S. at 562-63.
29. Reynolds v. Sims, 377 U.S. at 581. Reynolds, of course, has been the subject of extensive commentary, both favorable and unfavorable.

One criticism focuses on the Court’s rejection of the so-called “federal analogy” as applied to the states. An upper house structured upon other than majoritarian lines and analogous to the United States Senate is deemed important by some in order to safeguard the rights of minorities. See, e.g., Bickel, The Supreme Court and Reapportionment, in REAPPORTIONMENT IN THE 1970’s 70-72 (Polsby ed. 1971). Although this issue is not directly relevant to Holt, it should be noted in response to this criticism that Chief Justice Warren was of the opinion that “our constitutional system amply provides for the protection of minorities by means other than giving them majority control of state legislatures.” Reynolds v. Sims, 377 U.S. at 566. The Chief Justice then discussed several practical means to accomplish this goal without violating the fourteenth amendment. Id. at 566-77. Cf. Lucas v. Colorado General Assembly, 377 U.S. 713 (1964) (invalidating, as violating the equal protection clause, an apportionment plan approved by a majority of the state’s voters. “A citizen’s constitutional rights can hardly be infringed simply because a majority of the people choose to do so.” Id. at 736-37.). Moreover, whether pre-Reynolds malapportionment actually worked to protect the interests of minorities is subject to dispute. See, e.g., Auerbach, Commentary, in REAPPORTIONMENT IN THE 1970’s, supra, at 79-81 (responding to Professor Bickel’s article cited above).

A second basis for the attack on Reynolds is that the case really accomplished little change in the status quo, although this matter, too, is hotly contested. Compare E. Bushnell, IMPACT OF REAPPORTIONMENT ON THE THIRTEEN WESTERN STATES 27 (1970) (concluding that Reynolds was largely ineffective) with R. McKay, REAPPORTIONMENT REAPPRAISED 15-19 (1968) (concluding that reapportionment was instrumental in changing the complexion of legislatures which effected such changes as “increased aid for schools, greater home rule, better consumer protection, stronger civil rights legislation, curbs on air and water pollution, and updated criminal statutes.” Id. at 17.). See also Y. Cho, MEASURING THE EFFECTS OF REAPPORTIONMENT IN THE AMERICAN STATES 97-98 (1976) (a methodological approach attempting to measure Reynolds’ effects, yielding a conclusion that falls somewhere between those of Bushnell and McKay). Moreover, this objection to Reynolds overlooks an important factor—the Constitution and Bill of Rights are concerned not with effects, but with rights of individuals. They speak not in terms of governmental efficiency but rather of individual equality.

This argument can perhaps best be refuted by an analogy that goes to the heart of America’s political system. This country’s cumbersome legislative machinery and system of checks and balances is preferred over the economies of operation and concomitant loss of individual freedom of
Reynolds thus requires courts to scrutinize strictly those laws that restrict the right to vote. The strict scrutiny standard examines whether the restriction is necessary to promote a compelling state interest and is carefully “tailored” to not exclude otherwise qualified voters from electoral participation.30

B. Developments Since Reynolds: “Special Purpose” Elections and Residency Requirements

The “one man, one vote” principle and strict scrutiny test that Reynolds established for statewide elections were later held to apply to local “special purpose” elections where the outcome substantially affects the entire electorate.31 In addition, Reynolds provided the basis for a second line of cases holding that a separate but related type of voting restriction—the residency requirement—must also survive strict scrutiny to be upheld.32

I. Kramer and “Special Purpose” Elections of General Effect

Kramer v. Union Free School District33 addressed the validity of the New York Education Law then in effect.34 That law disenfranchised an otherwise qualified voter unless the person either (1) owned or leased real property, (2) was the spouse of one who owned or leased real property, or (3) was the parent or guardian of a child enrolled in public school.35 Appellant bachelor, who lived with his parents, was not allowed to register to vote in the school district election
even though he had voted in state and federal elections for years.\textsuperscript{36} Appellee school district insisted that the State could limit the franchise to those "primarily interested" in school affairs in order to further the State's legitimate interest in quality education. The Court rejected this contention, finding that the statute's classifications failed to serve the purported state interest because it excluded many who were directly interested in the school system, and included many who had only a remote or indirect interest in the election's outcome.\textsuperscript{37}

*Kramer*'s companion case, *Cipriano v. City of Houma*,\textsuperscript{38} invalidated a Louisiana law that allowed only property taxpayers to vote in a special-purpose election to approve the issuance of revenue bonds by a municipal utility; the bonds were to be repaid by utility revenues derived from persons not owning property, as well as from property owners. The *Cipriano* Court ruled per curiam that the Louisiana statute, like the New York law in *Kramer*, violated the equal protection clause because it denied the vote to people who were "as substantially affected and directly interested" as those permitted to vote.\textsuperscript{39} The Court determined that the State's sole justification for the statute—that it provided a "rational basis" for limiting the franchise to voters with a "special interest"—was insufficient to withstand strict scrutiny.\textsuperscript{40}

The *Kramer* line of cases thus forbids exclusionary classification of voters in limited-purpose elections having general effect, unless the classification can survive strict scrutiny. Courts will strike down a scheme if it is drawn to exclude otherwise qualified voters who have a substantial interest in or are directly affected by the election. In addition, courts will invalidate even a carefully tailored law unless the asserted governmental interest is compelling.

In *Salyer Land Co. v. Tulare Water District*,\textsuperscript{41} the Supreme Court refrained from applying a strict scrutiny standard in a suit brought to secure the franchise. There, California had established a system of storage districts to manage water. Control of each district was vested only in landowners, thus excluding nonlandowning residents but including nonresident landowners. The Court applied a rational basis standard to this scheme and upheld the California statutes. It stated

\textsuperscript{36} Id. at 624.
\textsuperscript{37} The Court found the statute deficient in achieving its purpose because it was both overinclusive and underinclusive. The Court, therefore, did not determine whether the interest advanced by the State was "compelling." Id. at 632 n.14.
\textsuperscript{38} 395 U.S. 701 (1969).
\textsuperscript{39} Id. at 706.
\textsuperscript{40} Id. Applying this same analysis, the Court later invalidated an Arizona law allowing only property owners to vote in elections to approve issuance of general obligations bonds that legally obligated all citizens. Phoenix v. Kolodziejski, 399 U.S. 204 (1970).
\textsuperscript{41} 410 U.S. 719 (1973).
that the water district’s “special purpose and . . . disproportionate effect of its activities on landowners as a group” justified limiting the franchise to that group.\textsuperscript{42} The Court also noted that the water district in no way exercised “general governmental power”\textsuperscript{43} and that the district’s activities primarily affected landowners, not residents \textit{qua} residents.\textsuperscript{44}

\textit{Salyer} is a narrow exception to the rule that voting rights cases should be strictly scrutinized. The Court stated in \textit{Salyer} that it will permit states to limit the franchise to a special class of voters only if the elected body lacks “general governmental power”\textsuperscript{45} and has a disproportionately greater impact on those permitted to vote than on those denied the vote. Such cases will be examined under a rational basis standard. The rule in \textit{Kramer} remains, however, that where the elected body exercises general powers that substantially affect the disenfranchised, courts will apply a strict scrutiny standard to determine the validity of the infringement.

2. Evans and State Residency Requirements

The Court has extended the strict scrutiny analysis of \textit{Reynolds} to statutory provisions that classify potential voters on the basis of “residency” within the political entity in which electoral participation is sought. Discriminatory residency requirements achieve the same result as the direct classification of voters in limited-purpose elections—they create a class of nonvoters that is not meaningfully distinguishable from the class of voters.

\textit{Carrington v. Rash}\textsuperscript{46} is the first case to follow \textit{Reynolds} that considered the validity of voting restrictions based on residency. Sergeant Carrington of the United States Army challenged a section of the Texas Constitution\textsuperscript{47} which provided that members of the armed forces living in Texas were voting residents of the county in which they resided prior to entering the service. Under this section, Carrington, who resided in Alabama before his induction, and others in his situation were barred from participating in Texas elections so long as they remained in the service.\textsuperscript{48} After carefully affirming the “broad powers” of the states to establish various qualifications for voters, the Court invalidated the provision because it operated in a discriminatory manner. The Court

\textsuperscript{42} \textit{Id.} at 728, 730-35.
\textsuperscript{43} \textit{Id.} at 727-28.
\textsuperscript{44} \textit{Id.} at 729. In a companion case, the Court upheld per curiam a Wyoming statute similar to California’s. \textit{See} Associated Enterprises, Inc. v. Toltec Dist., 410 U.S. 743 (1973).
\textsuperscript{45} \textit{Salyer Land Co. v. Tulare Water Dist.}, 410 U.S. at 727.
\textsuperscript{46} 380 U.S. 89 (1965).
\textsuperscript{47} \textit{Tex. Const.} art. VI, § 2.
\textsuperscript{48} 380 U.S. at 90-92.
did not openly subject the residency requirement to the close scrutiny that Reynolds had established the previous Term. A later decision, however, makes clear that discriminatory residency requirements must further a compelling interest to be upheld.

Evans v. Cornman presented a more complex factual situation that bears closely on the issue of extraterritoriality. Under the Maryland Constitution, as construed by the Maryland Court of Appeals, persons living on federal enclaves in Maryland were not considered state residents for electoral purposes. Appellees in Evans lived on the grounds of a federal reservation operated by the National Institute of Health (NIH). Accordingly, the county registrar declared that they were not qualified to vote in state elections. The Supreme Court stated that this disenfranchisement violated the equal protection clause of the United States Constitution and therefore granted appellees the vote.

The Court assumed that Maryland had a compelling interest to ensure that “only those citizens who are primarily or substantially affected by electoral decisions have a voice in making them.” The Court observed, however, that Maryland’s criminal laws, its income, gasoline, sales, and use taxes, and its unemployment and workers’ compensation laws applied equally to voting residents of Maryland and people living on NIH grounds. In addition, NIH residents were subject to automobile regulations and the process and jurisdiction of state courts, and they sent their children to state-operated public schools. In short, “there are numerous and vital ways in which NIH residents are affected by electoral decisions.” Maryland law thus violated the equal protection clause by creating a classification based on residence that excluded otherwise qualified voters who were “just as interested” in the election’s outcome as their voting neighbors. This classification

50. 405 U.S. at 337. Dunn invalidated a Tennessee law that required residence of one year within the state and three months within the county as a prerequisite to voting. The Court held that Tennessee’s durational requirements were unnecessary either to prevent voting fraud or to assure knowledgeable voters. The requirements were also seen as a restriction on the right to travel. Id. at 338.
53. 398 U.S. at 419. Royer, 231 Md. 561, 191 A.2d 446 (1963), apparently precipitated the registrar’s action.
54. 398 U.S. at 426.
55. Id. at 422.
56. Id. at 424.
57. Id. at 423.
58. Id. at 426.
did not promote a compelling state interest, and thus could not withstand the strict scrutiny demanded by Kramer.

*Carrington* and *Evans* prescribe that residency requirements which operate in a discriminatory manner will be struck down under strict scrutiny. *Evans* found error in the ruling by Maryland's highest court because the criteria that court used to determine residency resulted in the creation of an excluded class of otherwise qualified voters. *Evans* thus reveals that the Supreme Court's determination of residency, not the state's, will control.

C. Little Thunder and Extraterritoriality

Before *Holt*, the only decision to analyze on equal protection grounds the extension of extraterritorial power unaccompanied by the franchise was *Little Thunder v. South Dakota*. Residents of what South Dakota terms an "unorganized" county—one lacking a county government—were subjected by statute to the jurisdiction of an "organized" neighboring county. The organized county exercised general governmental powers over the unorganized area, including the power to enact zoning regulations, establish parks and libraries, supervise fiscal affairs, levy and collect taxes, and dispatch police. The authorizing statutes, however, did not allow residents of the unorganized counties to vote for officials of their organized neighbors.

Holding that the trial court erred in applying a rational basis test to the statute, the Eighth Circuit reversed the district court's dismissal of the suit. The circuit court ruled that the trial court should have strictly scrutinized the limitation imposed on the franchise in this case. The court then found that the appellants had a substantial interest in the outcome of the elections in the neighboring organized county and concluded that the statutes violated the equal protection clause because they did not serve a compelling state interest.

Circuit Judge Lay's analysis of the controlling case law in the context of extraterritorial extension of power confirmed, first, that voting restrictions in elections of general interest are to be subjected to close scrutiny and, second, that geographic residency requirements must not create classifications that disenfranchise otherwise qualified voters who have a substantial interest in an election's outcome. The identity of

59. 518 F.2d 1253 (8th Cir. 1975).
60. See id. at 1256-57; S.D. COMP. LAWS ANN. § 7-17-1 (1967).
62. 518 F.2d at 1255.
63. The analysis that Judge Lay employed to arrive at this determination accurately summarizes the case law prior to *Holt* as it relates to the issue of extraterritoriality:

In an election of general interest, conditions, limitations or restrictions on the franchise,
issue in *Little Thunder* and *Holt*, coupled with Judge Lay’s thoughtful analysis in the former case, provided ample ground for the expectation that the Supreme Court would carefully scrutinize the Alabama statutes under attack in *Holt*.64

III

ANALYSIS

A. The Standard: Strict Scrutiny or Rational Basis?

The Court applied a rational basis standard to the statutory scheme in *Holt*, contending that the scheme did not impair appellants’ right to vote. Ignoring its own precedent, the Court established a novel test based on residency to determine whether statutory provisions infringe the right to vote. The Court also attempted to demonstrate that *Holt* fell within the “special purpose” exception to the strict scrutiny rule. This section examines the Court’s new voting rights test and its application of the limited-purpose exception to the present case.

1. Residency Requirements

The Court examined its recent voting rights cases in *Holt* and concluded that these cases shared a critical characteristic—the complainants resided within the geographical boundaries of the political entity in which they sought participation.65 Based on this, the Court argued that only residents could properly bring a voting rights case that would require strict scrutiny analysis; suits by nonresidents did not implicate the right to vote. Because the appellants in *Holt* resided outside of Tuscaloosa, the Court noted, the case did not present a voting rights issue and, therefore, should be analyzed under the rational basis test.

The Court’s analysis of prior voting rights cases was erroneous. The complainants in *Evans*, for example, were not residents of the po-

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64. See Comment, *supra* note 1, at 169.
65. 439 U.S. at 66-70.
litical entity exercising authority over them. There, the Maryland Court of Appeals had determined that residents of federal enclaves were not residents of Maryland under that State's constitution. The Supreme Court, however, did not view this as an obstacle to applying the strict scrutiny standard. Indeed, the Evans Court flatly rejected the argument advanced by Maryland—an argument identical to that adopted by the Holt Court—that the Evans appellees were not entitled to vote in Maryland elections because they did not live there.

The critical factor in previous voting rights cases was the effect that the exercise of governmental power had on the disenfranchised, not whether the disenfranchised lived within the boundaries of the political entity exercising such power. Thus, in Evans, the Court focused on the extent to which Maryland's governmental action had an impact on NIH residents. Having concluded that the impact was sufficiently substantial, the Court granted NIH residents the right to vote in Maryland elections.

Holt's "geographic" test for identifying voting rights cases is thus an unfortunate departure from precedent. Residency is an inadequate criterion to determine whether the franchise should be granted. It ignores the reality that governmental powers can reach well beyond the territorial boundaries of the political unit exercising them. Indeed, this is exactly the purpose of statutes authorizing municipalities to exercise extraterritorial power, that is, to extend the authority of the municipalities to unincorporated adjoining areas. Thus, the only meaningful way to examine whether voting rights are at stake is by focusing on the effect that the exercise of governmental power has on people. As the dissent suggested, the Court "cede[d] to geography a talismanic significance contrary to the theory and meaning of [the Court's] past voting rights cases."

Moreover, the Court may have misapplied its own test. The Court looked to the territorial boundaries of the City of Tuscaloosa to determine who should be enfranchised. The Court ignored, however, that Tuscaloosa's police jurisdiction encompassed both the city and its surrounding areas. Holt residents were clearly "residents" of this police jurisdiction. The Court failed to explain why it focused on the

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66. 398 U.S. at 421.
67. Id. Although the Evans Court does note that "[a]ppellees clearly live within the geographical boundaries of the State of Maryland," id., it is equally clear that (1) Maryland did not agree, and (2) the case turns not on cartographical distinctions but on the Court's finding that NIH residents are "just as interested in and connected with electoral decisions" as their voting neighbors. Id. at 426.
68. Id. at 426.
69. 439 U.S. at 81 (Brennan, J., dissenting).
70. Id. at 86-87. (Brennan, J., dissenting).
boundaries of the city rather than the boundaries of the police jurisdiction to determine residency.

2. The "Special Purpose" Exception

In a further attempt to justify its application of the rational basis test, the majority endeavored to show that Holt fell outside the Kramer rule because the authority exercised by Tuscaloosa officials over Holt residents was supposedly limited. The Court seemed to reason that the Alabama statutes delegated to Tuscaloosa special powers having a disproportionate impact, not general governmental powers.

This reasoning must be inferred, however, because the majority did not explain how Holt might fit into the "limited-purpose" exception. The majority did cite Salyer\(^71\) for the proposition that "at least in the context of special interest elections the state may constitutionally disenfranchise residents who lack the required special interest in the subject matter of the election.\(^72\) The mere restatement of the Salyer rule, however, does not demonstrate that Holt residents lacked this required "special interest"; moreover, the Court failed to show that Tuscaloosa's powers are not "general" and "governmental." Since, prior to Holt, Salyer was the only major voting rights case to which the Court applied the rational basis test,\(^73\) the majority's failure to explain the supposed similarities between Holt and Salyer emphasizes the weakness of its reasoning.

The facts of Holt clearly establish that Tuscaloosa exercised many general governmental powers that affected Tuscaloosans and extraterritorials alike. Under Alabama law, Tuscaloosa was empowered to exercise both "governing" and "lawmaking" power over its police jurisdiction residents.\(^74\) Holt residents sought to vote in an election for the officials who would determine the extent of police and sanitary services, regulate businesses and professions, and enact criminal ordinances.\(^75\) The actions of these officials were "governmental" and applied to city residents and extraterritorials alike. These actions had far greater impact on Holt residents than the outcome that the bond refer-


\(^72\) 439 U.S. at 69.

\(^73\) The decision in Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743 (1973), a companion case to Salyer, was announced per curiam and relied heavily on Salyer for its resolution.

\(^74\) See City of Homewood v. Wofford Oil Co., 232 Ala. 634, 637 (1936), cited in 439 U.S. at 83 (Brennan, J., dissenting).

\(^75\) For a complete list of regulations affecting Tuscaloosa's extraterritorial neighbors, see note 8 supra.
endum had on the disenfranchised, nonlandowning utility customers in Ciriano, or that the school district election had on the childless New York bachelor in Kramer.

*Holt* simply does not fall within the limited-purpose exception to strict scrutiny described in Salyer. Tuscaloosa exercised general governmental powers over residents of Holt. Moreover, *Holt* would clearly be classified as a voting rights case under the analysis advanced in Kramer, Evans, and Ciriano—the exercise of extraterritorial power by Tuscaloosa substantially affected Holt residents, even though they were not residents of Tuscaloosa itself. The appellants in *Holt*, therefore, should have had their case decided with the benefit of the Court's strict scrutiny analysis.

### B. Applying the Strict Scrutiny Standard

To survive strict scrutiny analysis, a vote-infringing law "must be necessary to promote a compelling state interest."[76] The analysis employed by the Supreme Court has two elements. First, the state must articulate an interest that the Court finds compelling. Second, the means chosen by the state must be necessary to further that interest. "If there are other, reasonable ways to achieve [enfranchisement] with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.'"[77]

Applied to *Holt*, strict scrutiny analysis would have required Alabama to demonstrate that its interest in maintaining extraterritorial power was compelling, and that the disenfranchisement of Holt residents was necessary to promote that interest. This section suggests that the State might have had a compelling interest in the continued exercise of extraterritorial power. The scheme chosen by Alabama, however, was not "necessary" to achieve this end. Partial enfranchisement of Holt residents would have been a reasonable alternative. It is plausible that the precise contours of the remedy would have been too complicated for the Court to fashion itself. The Court, however, should have enlisted the assistance of the state legislature in this matter, as it did in *Reynolds v. Sims*.

#### 1. The Compelling State Interest

The issue presented in *Holt* is only one aspect of the problem of operating a municipal corporation whose authority is confined to fixed geographical boundaries but whose needs and responsibilities extend

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77. Dunn v. Blumstein, 405 U.S. at 343.
beyond those boundaries. The general rule is that a city's authority stops at its border unless the state legislature delegates extraterritorial powers to it. The realities of modern urban life have forced municipalities to seek legislative grants of extraterritorial power to provide their citizens with basic services—such as water, sewer and utilities, recreational facilities, health services, and major transportation facilities such as airports. In addition, states have long recognized that cities need extraterritorial powers to deal with activities in surrounding areas that have an adverse impact on the city. Finally, grants of extraterritorial power may be necessary because the cities are often the only reasonable source of basic services for surrounding territories. Thus:

No longer is it correct to say that “the” jurisdiction of municipalities is confined to their boundaries. Accuracy requires recognition that most municipalities possess a number of “jurisdictions.” A municipality may extend its powers over one territory in order to acquire water and over another in order to inspect dairies that supply milk to its residents; it may acquire property for sewage disposal facilities in one area and for parks in another; it may be able to collect taxes only from its residents and at the same time provide a variety of services to nonresidents.

In *Holt*, Tuscaloosa's extraterritorials were subjected to a panoply of regulations and services. Some of the more significant ordinances enforced the city's building codes, the State's misdemeanor statutes, and various vehicular laws. Alabama's grant of extraterritorial power to

78. The modern view of cities with fixed limits and extraterritorial powers contrasts sharply with the concept of cities of earlier historical periods which exercised general control over neighboring areas. The Greek city-state, for example, connoted no concept of geographical boundaries.

The cities in early England were organized according to similar principles, having no boundaries other than natural ones such as rivers (or an artificial one, if another city was situated nearby). Centralization of government apparently reversed the status quo shortly before the colonization of America, for it was deemed necessary to specify the extraterritorial powers of colonial cities in their charters. Baltimore, for example, was granted the power to prevent the introduction of contagious diseases within three miles of its boundaries by its charter of 1796. *See* R. Maddox, *Extraterritorial Powers of Municipalities in the United States* 6-9 (1955).

79. *Id.* at 10. Such legislative grants of power have generally been upheld. The first of many challenges was rejected in *Board of Trustees v. Watson*, 68 Ky. (5 Bush) 660 (1869). *See* discussion in Comment, *supra* note 1, at 158-60. On the other hand, if the authority delegated is extensive or is accomplished without legislative authorization, it may be withdrawn.

In *Malone v. Williams*, 118 Tenn. 390, 103 S.W. 798 (1907), the Supreme Court of Tennessee invalidated an enabling act that granted to the City of Memphis all governmental and police powers two miles beyond its boundaries. *Duncan v. City of Lynchburg*, 2 Va. Dec. 700, 705, 34 S.E. 964 (1900), held that a city may not own an extraterritorial quarry for street-maintenance purposes in the absence of express authorization in its charter. *Cf.* *Schneider v. City of Menasha*, 118 Wis. 298, 95 N.W. 94 (1903) (approving a city's "express power" to own extraterritorial real estate for street-maintenance purposes). For further discussion, *see* Anderson, *The Extraterritorial Powers of Cities*, 10 Minn. L. Rev. 475, 482 (1926).


81. For a complete catalogue of Tuscaloosa ordinances that have effect in its police jurisdiction, *see* note 8 *supra*. 
its cities may have been the only reasonable and effective means of
governing unincorporated areas adjacent to those cities. Indeed, the
Court’s recognition that “[t]he extraterritorial exercise of municipal
powers is a governmental technique neither recent in origin nor unique
to the State of Alabama” lends support to this view.

The Court has always been reluctant to enumerate those state in-
terests that it finds compelling. Thus, speculation about how the
Court would have treated Alabama’s asserted interest had it actually
reached the question is, at best, uncertain. Nevertheless, the wide-
spread and longstanding use of extraterritorial power noted by the
Court suggests that states attach paramount importance to this system
of governing unincorporated areas. The Court conceivably would have
also found Alabama’s interest in maintaining this system to be compel-
ing.

2. Less Onerous Alternatives

Given that the State may have a compelling interest in governing
and providing services for extraterritorial residents, the question be-
comes whether Alabama’s system of extraterritorial power was neces-
sary to achieve the State’s goal. Under the Court’s strict scrutiny
analysis, Alabama’s statutes would have been valid only if no “other,
reasonable ways” existed to enfranchise the Holt appellants. This sec-
tion explores various alternatives to Alabama’s statutory scheme.

a. Full Enfranchisement

An obvious alternative would be to enfranchise the police jurisdi-
cion residents. Full enfranchisement would, with respect to Tus-
caloosans, give extraterritorials “an equally effective voice in the
electoral process.” In effect, it would merge the City of Tuscaloosa
and its police jurisdiction for electoral purposes. Justice Brennan advo-
cated this alternative in his dissent: “Neither Tuscaloosa’s interest in
regulating activities carried on just beyond [its] ‘city limit’ signs, . . .
nor Alabama’s interest in providing municipal services to unincorpo-
rated communities surrounding its cities, . . . are in any way inconsis-

82. 439 U.S. at 72.
83. In the area of voting rights, for example, the Court first refused to speculate whether a
state had a compelling interest in limiting the franchise to those who were “primarily affected”
by the election’s outcome. Kramer v. Union Free School Dist., 395 U.S. at 632. It then assumed
arguendo that the interest was compelling. Cipriano, 395 U.S. at 704, and still later, while main-
taining this assumption, refused to decide the question, Evans v. Cornman, 398 U.S. at 422.
84. The Court has squarely decided that the prevention of voter fraud constitutes a compel-
lng state interest. Dunn v. Blumstein, 405 U.S. at 345.
85. 439 U.S. at 76 (Stevens, J., concurring) (citing Avery v. Midland County, 390 U.S. at
480).
tent with the extension of the franchise to residents of Tuscaloosa’s
city’s police jurisdiction. 86

Justice Brennan’s argument failed to perceive, however, that even
though Holt residents had a substantial interest in a number of govern-
mental programs conducted by Tuscaloosa, this interest did not extend
to all of the city’s affairs. Tuscaloosa’s extraterritorial powers over Holt
were clearly limited—for example, the city did not administer Holt’s
schools and did not have authority to impose zoning or ad valorem
taxation. 87 Logically, then, Holt residents had no cognizable interest in
how Tuscaloosa chose to run its own schools or conduct other exclu-
sively internal matters.

By fully enfranchising Holt residents in Tuscaloosa, Justice Bren-
nan would have given them a voice in important matters that con-
cerned only Tuscaloosans. In other words, his solution would “dilute”
the voting power of Tuscaloosa residents with respect to such matters.
Justice Brennan apparently failed to recognize the interest of city resi-
dents in preserving the weight of their votes. Ironically, his solution
may itself raise equal protection problems.

The Supreme Court has yet to directly address the validity of a
grant of the franchise to too many people. In Locklear v. North Caro-
olina Board of Education, 88 however, the Fourth Circuit confronted this
issue, looking primarily to Supreme Court voting rights cases for guid-
ance.

The facts in Locklear are rather complicated. The Robeson
County Board of Education was divided into six separate school
boards—one board for each of the five cities in the county, termed
“city administrative units,” and a sixth board for the remaining areas in
the county, known as the “county board.” Despite this nomenclature,
each board had “exclusive geographical jurisdiction” and exercised the
same powers and responsibilities as the other boards. Each city admin-
istrative unit was elected only by voters of that particular city; seven
members of the eleven-member county board, however, were elected
by all voters, not just those residing in the county. County residents
brought suit against the North Carolina Board of Elections, claiming
that their votes were being unconstitutionally diluted by the votes of
city residents. The Board of Elections attempted to justify this dispar-
ity by pointing out that the county board performed administrative and
special functions for all six school boards. 89

In evaluating the conflicting claims, the Fourth Circuit relied on

86. 439 U.S. at 88 (Brennan, J., dissenting) (footnotes omitted).
87. Id. at 77 (Stevens, J., concurring).
88. 514 F.2d 1152 (4th Cir. 1975).
89. Id. at 1153.
the statement from *Reynolds* that “the right of suffrage can be denied by a debasement of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” The court found that *Kramer* was also applicable not only because the statutory classifications under attack in *Locklear* excluded persons with a direct interest in the school district elections, but also because the classifications included “many persons who ha[d], at best, a remote and indirect interest in school affairs.”

The court conceded that city voters had “an interest in the operation of the county school board, justifying some voice and some control” over it. It noted, however, that any control the county board did exercise was by agreement with the city boards which “could undoubtedly retain contractual rights of supervision and control over the county board’s performance.” The court thus concluded that the classification violated equal protection because it permitted the voting power of one class of voters to be diluted by a second class that had no substantial interest in the outcome of the particular election.

*Phillips v. Beasley* further illustrates the problem of dilution. Tuscaloosa County, Alabama, had two school systems—one that served city residents and another that served residents of the surrounding county. City residents were permitted to vote in the election of the county school board. The plaintiffs in *Beasley*, county residents living outside the city school district, contended that city voters had little interest in the operation of the county schools and, therefore, that the latter’s participation in the county board election diluted the votes of county residents. The court found, however, that the city made significant financial contributions to the county system and concluded that this support entitled its residents to electoral participation. Because plaintiffs could not demonstrate that city voters had “an insubstantial interest in the operation of the county schools,” the court dismissed the suit.

*Locklear* and *Beasley* establish that an extension of the franchise to people who lack a substantial interest in important areas of governance may well violate the equal protection clause. These cases thus

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90. Id. at 1154 (citing Reynolds v. Sims, 377 U.S. at 555).
91. 514 F.2d at 1154 (citing Kramer, 395 U.S. at 632).
92. 514 F.2d at 1154-55.
93. Id. at 1155.
94. Id. at 1155-56.
95. 78 F.R.D. 207 (N.D. Ala. 1978).
96. Id. at 212.
97. The *Beasley* court, unlike the *Locklear* court, applied the rational basis test to the dilution problem, disagreeing with *Locklear*’s use of the compelling state interest test. Thus, there is some confusion as to the proper test to be applied.
substantiate the concern that Justice Brennan’s call for full enfranchise-
ment in _Holt_ is fraught with constitutional difficulties. Holt residents
had absolutely no cognizable interest in numerous functions conducted
by the City of Tuscaloosa. The grant of an equal voice to extraterritori-
als, regardless of laudable motives, would necessarily dilute the vote of
Tuscaloosa’s residents in important matters.

The difficulty in _Holt_ is that there are competing constitutional in-
terests. On the one hand is the interest of extraterritorials in having a
voice in matters that affect them. On the other hand is the interest of
Tuscaloosa residents in having the integrity of their voting power pre-
served.

Neither the majority nor Justice Brennan attempted to accommo-
date these interests. The majority’s solution—no enfranchisement—
completely ignored the interest of extraterritorials. Justice Brennan’s
solution—full enfranchisement for extraterritorials—ignored the inter-
est of Tuscaloosa’s residents.⁹⁸

The solutions offered by the Court and Justice Brennan cannot be
justified. The majority apparently found the interest of city residents
weightier than that of extraterritorials. Justice Brennan obviously be-
lieved the converse. Both interests, however, relate to the right to vote
and have constitutional dimensions. There is no reason to believe that
one is superior to the other. A meaningful resolution of these conflict-
ing interests must avoid this “all or nothing” approach. The analytic

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⁹⁸. Perhaps neither the majority nor Justice Brennan are entirely to blame for their facile
solutions in _Holt_. _Holt_ confronted the Court for the first time with competing constitutional
claims in the voting rights area. The existing case law did not provide the Court with an adequate
analytic framework to adjust these competing claims. For example, in _Kramer_ , the governmental
body in which appellants sought to participate had exercised power in only one area—public
schools. By showing a substantial interest in the school system, appellants were entitled to full
enfranchisement in the school district. Therefore, their constitutional interest in participation did
not work a dilution of the voting rights of others. In contrast, the governmental unit in _Holt_—
Tuscaloosa’s city council—exercised power in a variety of areas. The interest of an extraterritorial
in one of these areas did not guarantee an interest in all of them. As a consequence, dilution of
Tuscaloosans’ voting rights was an inevitability, creating a competing constitutional interest.
task in cases like *Holt* should not be to determine which interest is more important, but to discover how best to accommodate both.

The Court's prior voting rights cases are helpful to establish some ground rules to accommodate these interests. *Reynolds* provides a starting point. It established the principle that each citizen's vote should weigh equally with the vote of every other. In addition, *Kramer* and several other cases strongly suggest that extraterritorials are entitled to representation to the extent that they are substantially interested in or affected by the municipal government.

Consequently, a court should look for solutions that will enfranchise extraterritorials only to the extent of their interest in the city's affairs. There is arguably a "spectrum" of potential remedies. At one extreme, of course, is full enfranchisement. A court would properly order full enfranchisement where extraterritorials are affected by the city's activities in virtually the same way as city residents. At the other extreme of the spectrum is no enfranchisement. This result would be appropriate where extraterritorials do not have a substantial interest in the city's affairs. In between these extremes lies the gray area of partial enfranchisement. Here, a court would want to precisely determine the extent of the extraterritorials' interest and develop a remedy to afford them an appropriate voice in the city's government.

### b. Partial Enfranchisement

An alternative that might resolve the enfranchisement-dilution conflict would be to grant extraterritorials a limited voice in the municipality's affairs. There are several ways in which partial enfranchisement could be achieved.

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99. See text accompanying notes 24-30 supra.

100. See text accompanying notes 33-40 supra.

101. This "interest" criterion has frequently been used by the Court as a guide to determine whether a given complainant is entitled to vote. See, e.g., *Phoenix v. Kolodziejski*, 399 U.S. 204, 207-08, 212 (1970) ("substantially affected"; "substantial interest"); *Evans v. Cornman*, 398 U.S. at 425 n.5, 426 ("substantially" interested; "just as interested"); adopting the district court's conclusion "that on balance [the disenfranchised NIH residents] are treated by the State of Maryland as state residents to such an extent that it is a violation of the Fourteenth Amendment for the State to deny them the right to vote." 295 F. Supp. at 659." *Id.* at 424-25 (emphasis added); *Hadley v. Junior College Dist.*, 397 U.S. 50, 53-54 (1970), quoted in *Salyer Land Co. v. Tulare Water Dist.*, 410 U.S. at 727 (the test is whether "important governmental functions . . . have sufficient impact throughout the district"); *Cipriano v. City of Houma*, 395 U.S. at 706 ("substantially affected and directly interested"); *Kramer v. Union Free School Dist.*, 395 U.S. at 627 ("substantially affected"). *See also Avery v. Midland County*, 390 U.S. at 484 (requiring reapportionment of the Midland County Commissioners Court which was authorized "to make a substantial number of decisions that affect all citizens, whether they reside inside or outside the city limits of Midland," *id.* (emphasis added), although the Commissioners Court was not a government unit having general governmental powers).

One solution would be to grant extraterritorials representation on the city's legislative body in proportion to their population, but to restrict their representatives' votes only to matters that affect extraterritorials. In Tuscaloosa, for example, the city council is known as the Commissioner's Board and consists of three Commissioners. Assuming that there are 30,000 Tuscaloosa residents and 20,000 Holt residents, the extraterritorials would be entitled to elect a fourth and fifth member to the Board. Those members would be able to vote only on issues that affect Holt residents.

This proposal would avoid any dilution of the votes of city residents. The extraterritorials' representatives would not vote on matters that pertained only to Tuscaloosa, such as public schools, zoning, taxation, and other strictly internal issues. The interest of Holt residents in being enfranchised is thereby accommodated with the interest of city residents in preserving the integrity of their votes.

This approach, however, presents practical problems. The line between issues that are strictly internal and those that affect extraterritorials is difficult to draw. Undoubtedly, numerous disputes would arise over what issues the extraterritorials' representatives would be allowed to vote on. Moreover, there is the problem of who should decide these disputes. The courts would probably be forced to play a role, even though such disputes are not well-suited for judicial determination. The practical difficulties with this solution thus require that it be rejected.

A second solution would be to allow the extraterritorials' representatives to vote on all matters before the Commissioner's Board, but the appropriate number of representatives would be fewer than that which would be expected on the basis of population alone. In the illustration above, for example, having only one extraterritorial member on the Board might achieve fair representation of extraterritorial interests on that body. Or, extraterritorials might be granted a fractional vote corresponding to their interests in the municipal election's outcome.

This proposal accommodates the enfranchisement interest of extraterritorials with the dilution concerns of city residents. Both groups give something up under this scheme. The extraterritorials do not have a "full voice" in matters that substantially affect them because they have less representation on the Board than their numbers would otherwise warrant. Likewise, city residents have their voting power diluted somewhat because the extraterritorials' representatives are allowed to vote on matters that affect only Tuscaloosans. Nevertheless, this pro-

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102. Telephone conversation with Mr. George F. Lamb, City Clerk of the City of Tuscaloosa, Oct. 29, 1979. The Chairman of the Commissioner's Board is commonly referred to as the mayor. The other two commissioners serve part-time. Id.
posal recognizes the validity of both interests and respects each interest in a meaningful way.

It should be apparent, however, that courts will face enormous obstacles fashioning remedies on their own. Local governments are complex and varied organizations. A court would have to familiarize itself with the intricacies of the particular government and make delicate judgments about how best to enfranchise partially extraterritorials. Moreover, the court would have to evaluate the extent of the extraterritorials' interest in the city's affairs to determine the weight of their voice. Surely, these tasks would not only be burdensome but would also test the limits of judicial competence. The remedy finally chosen by a court is likely to be unsound, if not "onerous."

In Reynolds v. Sims, the Supreme Court acknowledged that courts may be ill-suited to fashion remedies in voting rights cases without assistance. The Court suggested that enlisting the help of a legislative body in this matter would be appropriate. Thus, in Reynolds itself, the Court requested the Alabama Legislature to develop a constitutionally permissible apportionment plan. The Court left the necessary factfinding and line-drawing to the legislature, so long as that body adhered to the "one man, one vote" principle. To ensure compliance, the Court commanded the district courts to evaluate carefully the plan submitted by the legislature. This procedure of enlisting legislative assistance has often been mandated by the Court, and lower courts are familiar with it.

The subsequent history of Reynolds confirms the success of the Court's approach in that case. Four years after Reynolds was handed down, "congressional district lines were redrawn in thirty-seven states . . . and it seemed probable that more than thirty of the state legislatures satisfied any reasonable interpretation of the equal-population principle." State legislatures have thus proven to be willing assist-

103. 377 U.S. at 566.
104. "[L]egislative reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reappoint according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." Id. at 541. See also Davis v. Mann, 377 U.S. 678, 693 (1964); Maryland Comm. v. Tawes, 377 U.S. 656, 675-76 (1964).
105. In addition to Reynolds, which was remanded to the District Court for the Middle District of Alabama, see, e.g., the companion cases to Reynolds, Lucas v. Colorado Gen. Assembly, 377 U.S. 713, 739 (1964) (remanded to the United States District Court for the District of Colorado); Rounan v. Sincock, 377 U.S. 695, 711-12 (1964); Davis v. Mann, 377 U.S. 678, 693 (1964) (remanded to the United States District Court for the Eastern District of Virginia); Maryland Comm. v. Tawes, 377 U.S. at 676 (remanded to Maryland Court of Appeals); and WMCA, Inc. v. Lomenzo, 377 U.S. 635, 655 (1964) (remanded to the United States District Court for the Southern District of New York).
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ants in remediing an unconstitutional infringement of the right to vote.

The Reynolds approach to fashioning remedies should have been applied in Holt. A precise accommodation of the competing constitutional interests in Holt may have been beyond the Court's competence—indeed, the Court would have been at a loss to choose among the various partial enfranchisement plans. The Court nevertheless should have enlisted the aid of the Alabama Legislature to devise an alternative. This would have permitted the legislature to apply its expertise to fashion a flexible alternative that would have been both constitutionally and politically acceptable.

The Court subsequently should have remanded the case to the district court to ensure that the legislative plan complied with constitutional principles. Deference to the legislative choice would be appropriate. The trial court, however, need not abandon its role of protecting constitutional rights. The court would still have to evaluate the plan to determine whether it enfranchised extraterritorials roughly to the extent of their interests in the city's affairs.

The Reynolds approach arguably creates an overwhelming presumption that there is a less onerous alternative to disenfranchisement. Once a court is convinced that the right to vote has been substantially infringed, it is then incumbent upon the state legislature to develop an acceptable alternative or to demonstrate convincingly that no such alternative exists. And because the legislature is free to adopt any measure it desires—so long as it remains within the bounds of the Constitution—the state will be hard pressed to show that it cannot devise a less onerous scheme.

The Court's own precedent thus suggests a workable means of accommodating the competing constitutional interests at stake in cases of extraterritorial power. As a general proposition, courts could seek the assistance of a legislative body to fashion a remedy. Only as a last resort would the court have to attempt to develop its own remedy. In light of the legislative response to Reynolds, courts will generally be able to count on cooperation from legislatures.

c. "Legislative" Solutions

Under the Reynolds approach to remedies, the legislative body has

107. See Cantwell v. Hudnut, 566 F.2d 30 (7th Cir. 1977). In evaluating the claims of plaintiffs that their votes were diluted by the establishment of a special-purpose police and fire district, the Seventh Circuit noted the complexities of determining the extent of dilution, id. at 37 n.13, and approved the legislative solution to what it considered a difficult problem because the solution was "a reasonable accommodation of the various interests involved." Id. at 38. Moreover, deference to "reasonable accommodations" of legislative bodies is consistent with the flexibility that the Reynolds Court indicated would be necessary to effect meaningful reapportionment of state legislatures. See Reynolds v. Sims, 377 U.S. at 577-81.
much leeway to develop an alternative to its present statutory scheme. The legislature could develop a partial enfranchisement remedy—the minimum that is arguably required by the Constitution. The legislature, however, could also go beyond the constitutional minimum and make sweeping changes in how the state governs its unincorporated areas. A court may not order the legislature to make such changes or develop them itself, as these reforms are clearly not constitutionally mandated. The legislature is free, however, to engage in such governmental reform. This section briefly surveys some of the more comprehensive solutions advanced to deal with the problem of extraterritorials.

One alternative is to administer unincorporated areas through an existing governmental unit in which extraterritorials already have a voice. The county government is a logical choice. Arizona, for example, permits its counties to promulgate health and police regulations, while California has authorized them to license businesses. Thus, in *Holt*, the Alabama Legislature could have transferred police powers from the City of Tuscaloosa to the county. The state government might also be a sound choice. Vermont has addressed the problem in this manner. Its governor appoints a supervisor for each county who performs general governmental functions and is empowered to appoint a planning commission for unincorporated areas in his county. Both county and state supervision of unincorporated areas prevent the “dilution” problem encountered by enfranchising in a municipality extraterritorials who have only a partial interest in the municipality’s affairs.

A more innovative scheme—administration of outlying areas by a newly created regional government or administrative unit—has been implemented in the Boston and Indianapolis areas. Greater Boston has a governmental unit known as the Metropolitan District Commission. The Commission has the authority to operate a police force, regulate water, sewage, and recreation services, and exercise eminent domain in the metropolitan area. The Indiana Legislature went even further; it merged the governments of Indianapolis and surrounding Marion County. Although the regional government alternative involves the balancing of conflicting constitutional interests, a legislature is capable of striking a proper balance, as the recent judicial rejection of a voting

111. Id. § 4327(e).
112. MASS. ANN. LAWS ch. 28, § 1 (Michie/Law. Co-op Supp. 1975); id. ch. 92. These and other alternatives to city administration are examined in detail in Comment, supra note 1, at 171-78.
rights attack on the Indiana plan demonstrates.\textsuperscript{113}

The Reynolds approach to remedies would encourage legislatures to be innovative in drafting alternative schemes. Not only does this protect the constitutional right of extraterritorials to have a voice in matters that substantially affect them, but it might also pave the way to more effective government planning.\textsuperscript{114}

d. Summary

Strict scrutiny analysis requires a court to determine whether the state's statutory scheme is necessary to achieve a compelling state interest. Alabama may have had a compelling interest in having its cities exercise extraterritorial power over unincorporated areas. The scheme adopted to accomplish this end, however, was hardly necessary. The Court should therefore have invalidated Alabama's vote-infringing statutes and enlisted the assistance of the Alabama Legislature to develop a less onerous scheme that properly accommodated the competing constitutional interests.

CONCLUSION

In \textit{Holt Civic Club v. City of Tuscaloosa}, the Supreme Court validated a statutory scheme that permitted the City of Tuscaloosa to exercise substantial police powers over extraterritorials without representation. In doing so, the Court developed a new test based on geography to identify situations in which the right to vote has been infringed. The Court reasoned that because the appellants in \textit{Holt} were not residents of Tuscaloosa, the statutory scheme was appropriately reviewed under a rational basis standard.

The Court's test for identifying voting rights cases is highly artificial. It permits the disenfranchisement of extraterritorials who are substantially affected by the exercise of municipal police powers. Such a result hardly comports with any sensible understanding of the right to vote.

Because the statutory scheme in \textit{Holt} infringed upon the extraterritorials' right to vote, the Court should have employed a strict scrutiny standard. The application of this standard in turn should have led the Court to conclude that Alabama had a compelling interest in permitting municipalities to exercise extraterritorial power but that the disenfranchisement which resulted from Alabama's system of extraterritorial governance was unacceptable. As in Reynolds, the Court should have

\textsuperscript{113} See Cantwell v. Hudnut, 566 F.2d 30 (7th Cir. 1977).
\textsuperscript{114} For a fuller appreciation of these and other alternatives to the exercise of municipal power in terms of governmental reorganization, see Comment, \textit{supra} note 1, at 171-78.
enlisted legislative assistance to develop a less onerous alternative to the statutory scheme. By recognizing that the voting rights of extraterritorials—as well as those of city residents—are vitally important, this approach would be consistent with the basic proposition of Reynolds that the right to vote is fundamental. The Holt Court's casual treatment of appellant's claims casts doubts upon this proposition.115

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115. Holt has already been used as authority for using the rational basis test in the context of denying students at Pennsylvania State University a voice in the election of the university's trustees. See Benner v. Oswald, 592 F.2d 174 (3d Cir. 1979).

Another author, also commenting upon Holt, is of the opinion that voting rights received their first blow with the application of the rational basis standard in Salyer. See Note, 48 U. CINN. L. REV. 589, 597 (1979).

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